

S. 3314

A M E N D M E N T

Intended to be proposed by _____
to S. 3314, a bill to amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, and for other purposes, and to amend title 5 of the United States Code to permit a person aggrieved by a constitutional injury to initiate and participate in a disciplinary inquiry of the offending act or omission, viz:

On page 21, immediately after subsection (a), insert the following and redesignate the following subsections accordingly:

"(b) Regulations issued by the Civil Service Commission under this section shall be approved by the Attorney General."

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On page 16, lines 2 through 4 and insert in lieu thereof:

"ing the administrative review shall determine on the record whether the action taken by the agency was reasonable. If no final".

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On page 11, lines 19 and 24, strike the words "or to request punitive damages".*

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On page 5 strike everything from line 6 through line 9 on page 6 and insert in lieu thereof the following:

"(b) (1) The remedy against the United States provided by section 1346(b) and 2672 of this title for claims for injury or loss of property or personal injury or death resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment or for claims arising from the violation of the Constitution of the United States by an employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding arising out of or relating to the same subject matter against the employee whose violation or act or omission gave rise to the claim, or against the estate of such employee."

(b) (2) In no event shall a claim for tort arising from a violation of the Constitution of the United States by an employee of the Government while acting solely under color of authority, lie against both the employee in his individual capacity and against the United States under sections 2675 and 1346(b) of title 28, United States Code."

On page 6 strike lines 14 through 22 and insert in lieu thereof the following:

"within the scope of his office or employment at the time of the incident out of which the suit".

On page 7 strike lines 9 through 16 and insert in lieu thereof the following:

"office or employment at the".

On page 8 strike lines 6 through 9 and insert in lieu thereof the following:

"office or employment for purposes of such initial removal. Should a".

On page 8 strike lines 13 through 16 and insert in lieu thereof the following:

"office or employment the case shall be remanded to the State court in".

ELECTION OF REMEDIES AMENDMENT

- The purpose of the amendment is to provide immunity to former Government employees and current and former Presidential appointees for civil suits alleging constitutional torts. The bill's current language would permit a plaintiff to elect between suing either the United States or the former employee or Presidential appointee. The amending language would limit suit to only the United States.
- The amendment would also change the standard for determining the type of employee conduct which would result in immunity for the employee from suits alleging constitutional torts. The bill currently provides immunity for conduct undertaken within the scope of authority or with a reasonable good faith belief in the lawfulness of one's conduct. The amending language provides immunity for conduct taken within the scope of one's office or employment. The "scope of office or employment" test is broader than the disjunctive standards currently set forth in the bill and would ensure that employees need not fear being sued for conduct which is reasonably related to their job responsibilities even though in excess of their authority.
- The amendment does provide, however, that if any employee was acting outside the scope of his employment but under the color of his office, a plaintiff may elect to sue either the employee or the United States.

SECRET

Journal - Office of Legislative Counsel
Wednesday - 23 August 1978

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25X1 19. [] LEGISLATION Spoke with Mr. George Gilbert, OMB, Office of Legislative Reference, who informed me that Justice has not yet been able to comment on CIA proposed amendments to the Federal Tort Claims Act (S. 3314). Mr. Gilbert did, however, state that Justice does not believe the bill has a chance of passage this session. This merely confirms earlier similar reporting from our sources on the Hill.

25X1 20. [] FOIA/LIAISON Received a call from Gail Zauder, in the San Antonio District office of Representative Robert Krueger (D., Texas), who was inquiring on behalf of a constituent who wanted to find out how the constituent could obtain any information that the CIA may have on him under the Privacy Act. Per [] request, I informed Ms. Zauder that the constituent should write to [] Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505. I informed Ms. Zauder the need for proper identification to start search of Agency records and that the search would take approximately six to eight months depending on what, if anything, was located. 25X1

25X1 21. [] LIAISON Called Cliff Fowler, GAO, to set up a meeting between Agency representatives and himself to discuss suggested Agency changes in the draft GAO report []. The meeting is scheduled for 24 August, at 9:00 a.m., at Headquarters. 25X1

25X1 22. [] LIAISON Accompanied [] 25X1
[]
to an informal meeting with Owen J. Malone, Chief Counsel, Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, Richard N. Perle and Peter Sullivan, both of the Subcommittee staff, which was held in 101 Russell Senate Office Building from 1530 to 1745 hours. The subject concerned the Agency's role in the Government's decision to grant an export license to Dresser Industries to sell the Soviet Union a technology to manufacture an oil drilling drill bit. The meeting was requested by Mr. Perle as part of the Subcommittee's investigation of the Government's granting of the license to Dresser. [] made clear that the Agency has only an advisory role in the decision making to grant such a license, and gave a brief rundown of the Agency's reaction to the sale. (See Memorandum for the Record prepared by []) 25X1
[] 25X1

SECRET

22 August 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Federal Tort Claims Act Developments

1. The undersigned spoke with Park Stearns, FBI Congressional Affairs, on 22 August regarding the status of the Federal Tort Claims Act Amendments. The bill is still stalled in Committee with Senator Howard Metzenbaum (D., Ohio) pushing for House inclusion of a disciplinary bill as well as limiting coverage to "scope of authority" as in the Senate version vice the broader "scope of employment" standard of the House bill.

2. Justice, per Pat Wald, Office of Legislative Affairs, still has several significant problems with the Senate (Metzenbaum) bill. Towit:

a. They oppose the election of remedies provisions vis-a-vis former employees and Presidential appointees. According to the FBI, the Carter Administration remains unalterably opposed to this position and will kill the bill rather than acquiesce.

b. Justice continues to battle for the broader "scope of employment" standard rather than the more narrow "scope of authority."

c. Justice desires a disciplinary bill be included in the House version.

3. Our problems with the bill, forwarded to Justice via OMB, remain unanswered as well.

4. A meeting is planned for 12:00 p.m. Wednesday, 30 August, at CIA between myself and Mr. Stearns in order to discuss fully CIA's remaining problems.

Assistant Legislative Counsel

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